

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

NETLIST, INC.,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., et al.,

Defendants.

Civil No. 2:22-cv-00293-JRG
(Lead Case)

JURY TRIAL DEMANDED

NETLIST, INC.,

Plaintiff,

v.

MICRON TECHNOLOGY TEXAS, LLC, et al.,

Defendants.

Civil No. 2:22-cv-00294-JRG
(Member Case)

JURY TRIAL DEMANDED

**SAMSUNG'S SUR-REPLY TO NETLIST'S MOTION FOR SUMMARY
JUDGMENT ON SAMSUNG'S PROSECUTION LACHES DEFENSE (DKT. 352)**



TABLE OF AUTHORITIES

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Cases

<i>Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.</i> , 2015 WL 5786501 (E.D. Tex. Sept. 30, 2015)	1
<i>TQP Development, LLC v. Alaska Air Group Inc.</i> , 2013 WL 12248229 (E.D. Tex. Nov. 6, 2013)	1
<i>Sonos, Inc. v. Google LLC</i> , 2023 WL 6542320 (N.D. Cal. Oct. 6, 2023)	1

TABLE OF EXHIBITS TO SAMSUNG'S OPPOSITION

#	Description
1	Samsung Supplemental Responses and Objections to Netlist Amended First Set of Interrogatories, Nos 1-20 (Nov. 20, 2023) (excerpts)
2	Declaration of Joseph C. McAlexander III (excerpts)
3	Deposition Transcript of Jeffrey Solomon (Nov. 13, 2023) (excerpts)
4	File History of U.S. Patent No. 10,268,608
5	File History of U.S. Patent No. 9,824,035
6	Deposition Transcript of Sung Joo Park (Nov. 23, 2022) (excerpts)
7	JEDEC Standard, DDR4 Data Buffer Definition, JESD82-32

TABLE OF ABBREVIATIONS

Abbreviation	Description
<i>EDTX1</i>	<i>Netlist Inc. v. Samsung Electronics Co. Ltd.</i> , No. 2:21-CV-463 (E.D. Tex.)

Netlist's assertion that Samsung's prosecution laches defense is based on "the exact argument the Court rejected in *Samsung P*" ignores the numerous factual differences between the prosecution of the patents here and those in *EDTX1*. Dkt. 421 at 1-2. Netlist offers no explanation as to why the Court can disregard those differences. Netlist also does not address the fact that the Court's finding in *EDTX1* was predicated on a jury verdict (that the claims did not lack written description support) that is not present here. *Id.* at 3. Moreover, Netlist's suggestion that "the Federal Circuit has repeatedly rejected prosecution laches defenses based on 'broadening' arguments" misses the mark. Although the Federal Circuit permits claim broadening when the claims remain supported by the specification, it does not permit Netlist to impermissibly amend its specification and claims in a way that depart from the original specification. Dkt. 421 at 1-2. Netlist also ignores *Sonos, Inc. v. Google LLC* cited by Samsung, where another court found patents unenforceable for prosecution laches on similar facts. 2023 WL 6542320, at *17, *26 (N.D. Cal. Oct. 6, 2023).

This Court should reject Netlist's untimely and incorrect argument that summary judgment is warranted because Samsung did not adequately disclose its prosecution laches defense. First, because Netlist raised this argument for the first time in its reply brief, it is waived. *See Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 2015 WL 5786501, at *5 (E.D. Tex. Sept. 30, 2015) ("The Court does not consider arguments raised for the first time in a reply brief."). Second, *TQP Development, LLC v. Alaska Air Group Inc.*, 2013 WL 12248229, at *4 (E.D. Tex. Nov. 6, 2013), is inapplicable; the court there granted a motion to strike license and exhaustion defenses because the defendant did not allege a theory of license or exhaustion at any "point, before the proposed jury charge accompanying to the pretrial order [including in expert reports]." 2013 WL 12248229, at *4. In contrast, here, Samsung provided its theory in discovery, including in its expert report. Dkt. 421 at 1-3. Indeed, Netlist does not take issue with the specificity set forth in Mr. McAlexander's report. Nor did it seek to strike his opinions or Samsung's defense. The Court should deny Netlist's motion.

Dated: February 14, 2024

Respectfully submitted,

By: /s/ Lauren A. Degnan

Melissa Richards Smith
melissa@gillamsmith.com
GILLAM & SMITH, LLP
303 South Washington Ave.
Marshall, Texas 75670
Telephone: (903) 934-8450
Facsimile: (903) 934-9257

J. Travis Underwood
Texas Bar No. 24102587
travis@gillamsmithlaw.com
GILLAM & SMITH, LLP
102 North College Avenue, Suite 800
Tyler, Texas 75702
Telephone: (903) 934-8450
Facsimile: (903) 934-9257

Brian R. Nester
DC Bar No. 460225
bnester@cov.com
COVINGTON & BURLING LLP
One CityCenter 850 Tenth Street, N
Washington, DC 20001-4956
Telephone: (202)-662-6000

Alice J. Ahn
CA Bar No. 271399/DC Bar No. 1004350
aahn@cov.com
COVINGTON & BURLING LLP
415 Mission Street, Suite 5400
San Francisco, CA 94105
Telephone: (415) 591-7091
Facsimile: (415) 955-6571

Ruffin B. Cordell
TX Bar No. 04820550
cordell@fr.com
Michael J. McKeon
D.C. Bar No. 459780
mckeon@fr.com
Lauren A. Degnan
D.C. Bar No. 452421
degnan@fr.com
Daniel A. Tishman
DC Bar No. 1013923
tishman@fr.com
FISH & RICHARDSON P.C.
1000 Maine Avenue, SW
Washington, DC 20024
Telephone: (202) 783-5070
Facsimile: (202) 783-2331

Francis J. Albert
CA Bar No. 247741
albert@fr.com
FISH & RICHARDSON P.C.
12860 El Camino Real, Ste. 400
San Diego, CA 92130
Telephone: (858) 678-5070
Facsimile: (858) 678-5099

Thomas H. Reger II
reger@fr.com
Texas Bar No. 24032992
FISH & RICHARDSON P.C.
1717 Main Street, Suite 5000
Dallas, Texas 75201
Telephone: (214) 747-5070
Facsimile: (214) 747-2091

*Attorneys for Defendants Samsung Electronics Co., Ltd.;
Samsung Electronics America, Inc.; and Samsung Semiconductor, Inc.*

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically in compliance with Local Rule CV-5 on February 14, 2024. As of this date, all counsel of record have consented to electronic service and are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3)(A) and via electronic mail.

/s/ Lauren A. Degnan

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